

Message Text

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ACTION EA-10

INFO OCT-01 ISO-00 EB-07 FEA-01 ERDA-05 AID-05 CEA-01

CIAE-00 CIEP-01 COME-00 DODE-00 FPC-01 H-02 INR-07

INT-05 L-02 NSAE-00 NSC-05 OMB-01 PM-03 SAM-01 OES-03

SP-02 SS-15 STR-04 TRSE-00 FRB-03 PRS-01 PA-01 USIA-06

NEA-09 EUR-12 /114 W

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P 110925Z APR 75

FM AMEMBASSY KUALA LUMPUR

TO SECSTATE WASHDC PRIORITY 9548

C O N F I D E N T I A L SECTION 1 OF 2 KUALA LUMPUR 1964

E.O. 11652: GDS

TAGS: ENRG MY

SUBJ: LEGISLATION ON OIL DISTRIBUTORS

REF: (A) STATE 83288; (B) KL 1860; (C) KL 1891

SUMMARY: BECAUSE OF IMMINENCE OF PRIME MINISTER'S DEPARTURE ON A EUROPEAN TOUR I DECIDED TO PROCEED WITH REPRESENTATIONS TO GOM ON GENERAL EFFECT OF THE BILL ON THE INVESTMENT CLIMATE PENDING RECEIPT OF DEPARTMENT'S INSTRUCTIONS. REF A WAS RECEIVED IMMEDIATELY AFTER MY RETURN FROM FOREIGN OFFICE. I LEFT WITH DATUK AHMAD ZAINAL ABIDIN, DEPUTY SECRETARY GENERAL, AN AIDE MEMOIRE SETTING FORTH OUR GENERAL CONCERNS ABOUT THE BILL. HE SAID HE WOULD INFORM THE PRIME MINISTER PROMPTLY, AND ASSURED ME IT WAS NOT THE GOVERNMENT'S INTENTION TO EXPROPRIATE FOREIGN PETROLEUM DISTRIBUTION COMPANIES. UNITED KINGDOM HIGH COMMISSION, FOLLOWING APPROACHES FROM SHELL AND BP HAS ASKED LONDON FOR INSTRUCTIONS. HIGH COMMISSIONER INTENDS SEEK INFORMAL OPPORTUNITY TO CONVEY THE SAME GENERAL CONCERNS ABOUT INVESTMENT CLIMATE.

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END SUMMARY.

1. WITH THE PRIME MINISTER SCHEDULED TO DEPART SATURDAY EVENING FOR A EUROPEAN TOUR AND COMMONWEALTH PRIME MINISTERS' MEETING IN JAMAICA, I FELT I SHOULD GET THROUGH TO HIM PROMPTLY OUR GENERAL VIEWS ON THE EFFECT OF THE PETROLEUM LAW ON INVESTMENT CLIMATE, PENDING FURTHER INSTRUCTIONS FROM WASHINGTON. ABSENCE FROM THE CITY YESTERDAY TO ATTEND A FAMILY WEDDING IN TRENGGANU, COMMITMENTS WITH VISITING PRINCE BERNHART OF THE NETHERLANDS AND GENERAL PREPARATIONS FOR DEPARTURE, MADE A FORMAL MEETING IMPOSSIBLE. I THEREFORE SOUGHT MEETING ON FRIDAY MORNING AT THE FOREIGN OFFICE WITH THE REQUEST THAT MY VIEWS BE PASSED TO THE PRIME MINISTER BEFORE HIS DEPARTURE.

2. I SAW DATUK ZAINAL, DEPUTY SECRETARY GENERAL AND MADE FOLLOWING POINTS:

A. ARTICLE 3 OF THE AMENDMENT TO THE PETROLEUM ACT PASSED BY THE DEWAN RAKRAT ON APRIL 8, HAS CAUSED AMERICAN COMPANIES ENGAGED IN PETROLEUM DISTRIBUTION IN MALAYSIA DEEPCONCERN ABOUT THE SECURITY OF THEIR INVESTMENTS.

B. THE PROVISION RELATING TO MANAGEMENT SHARES, IN THEIR VIEW, GIVES EFFECTIVE CONTROL OF MANAGEMENT TO PETRONAS AND IS THEREFORE TANTAMOUNT TO EXPROPRIATION THROUGH THE PURCHASE OF ONE PERCENT OF THE OUTSTANDING SHARES OF THE COMPANIES.

C. THIS PROVISION HAS CREATED IN BOTH LOCAL COMPANIES AND THEIR PARENT ENTITIES IN THE UNITED STATES GRAVE DOUBTS ON THE WISDOM OF FURTHER INVESTMENT IN MALAYSIA. IT IS ALSO LIKELY TO HAVE SERIOUS ADVERSE EFFECT ON THE INVESTMENT CLIMATE AND GIVE CAUSE TO OTHER POTENTIAL INVESTORS IN THE FIELD OF PETRO-CHEMICALS AND IN OTHER FIELDS OF MALAYSIAN ECONOMY.

D. THE ABSENCE OF ANY PRIOR CONSULTATION AND THE SPEED WITH WHICH THE MEASURE WAS RUSHED THROUGH
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THE NATIONAL ASSEMBLY HAS INTENSIFIED COMPANIES' CONCERN ABOUT THE GOVERNMENT'S INTENTIONS.

E. I WENT ON TO SAY THAT THE PRIME MINISTER, IN OUR FIRST MEETING, HAD ASKED ME TO DO ALL I COULD TO ENCOURAGE AMERICAN INVESTMENT IN MALAYSIA. THIS I HAD DONE IN THE 14 MONTHS I HAVE BEEN HERE. A MAJOR FAVORABLE ASPECT OF THE MALAYSIAN INVESTMENT CLIMATE WHICH I HAD OFTEN CITED WAS THE OPENNESS AND CAUTIOUS

DELIBERATION OF THE GOVERNMENT IN REACHING INVESTMENT DECISIONS. THE DEVELOPMENTS OF THE PAST WEEK HAD RAISED DOUBTS IN MY MIND ON THE CONTINUING VALIDITY OF THIS VIEW.

3. ZAINAL SAID HE WOULD SEE THAT MY VIEWS WERE CONVEYED PROMPTLY TO THE PRIME MINISTER. HE WENT ON TO SAY THAT THE GOVERNMENT HAD NO INTENTION OF KILLING THE GOOSE THAT LAID THE GOLDEN EGG; THAT NATIONALIZATION WAS NOT CONTEMPLATED AND THAT INDEED IN INTRODUCING THE BILL THE GOVERNMENT HAD REJECTED THE OPPOSITION'S DEMANDS THAT THE OIL DISTRIBUTION INDUSTRY BE NATIONALIZED. THE GOVERNMENT, HE WENT ON TO SAY, IS MERELY FOLLOWING A GENERAL PATTERN OF ALL DEVELOPING COUNTRIES IN SEEKING GREATER LEVELS OF CONTROL OVER THE KEY PETRO-CHEMICAL FIELD AND ASSERTING THE SOVEREIGN RIGHT TO CONTROL THIS IMPORTANT ASPECT OF THE ECONOMY. HE NOTED THAT THE LAW GAVE THE PRIME MINISTER DISCRETION ON THE APPLICATION OF THE LAW TO COMPANIES AND CLASSES OF COMPANIES. HE SAID THAT THE GOVERNMENT WAS NOT SATISFIED WITH THE RATE THAT MALAYS WERE BEING EMPLOYED BY SOME OF THE COMPANIES, AND THAT IN THE PAST THE COMPANIES HAD NOT BEEN FORTHCOMING ON REQUESTS FOR INFORMATION ABOUT COMPANY OPERATIONS

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ACTION EA-10

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P 110925Z APR 75

FM AMEMBASSY KUALA LUMPUR

TO SECSTATE WASHDC PRIORITY 9549

C O N F I D E N T I A L SECTION 2 OF 2 KUALA LUMPUR 1964

4. I SAID THE GOVERNMENT'S RIGHT TO TAKE OVER ANY INDUSTRY WAS NOT IN QUESTION, THAT IN MANY COUNTRIES GOVERNMENTS WERE TAKING OVER CONTROL OF OIL PRODUCTION AND DISTRIBUTION, BUT THAT THIS WAS BEING DONE BY PURCHASES OF 51 PERCENT OR MORE OF THE SHARES OF A COMPANY AND WITH ADEQUATE COMPENSATION. UNDER THE PROVISIONS OF THE BILL IN QUESTION, MANAGEMENT CONTROL WOULD BE ACQUIRED WITH THE PURCHASE OF ONE PERCENT OF THE OUTSTANDING SHARES. THE PROVISION EXEMPTING CERTAIN COMPANIES WAS NOT REASSURING, BECAUSE UNDER THE PROVISIONS OF THE LAW, THE SMALLEST GROCERY STORE SELLING KEROSENE WAS THEORETICALLY LIABLE TO GIVE UP MANAGEMENT CONTROL TO PETRONAS AND OBVIOUSLY THIS WOULD NOT BE THE GOVERNMENT'S INTENTION. I LEFT WITH ZAINAL AN AIDE MEMOIRE MAKING POINTS A, B AND C IN PARA 2 ABOVE.

5. I FOUND REF A WAITING FOR ME ON MY RETURN FROM THE FOREIGN OFFICE. THE ONLY POINT THAT I HAD NOT RAISED WAS THE POSSIBLE APPLICABILITY OF EXISTING U.S. LAWS RELATING TO NATIONALIZATION OF ASSETS OF U.S. CITIZENS. I FEEL IT WOULD BE UNDESIRABLE TO RAISE CONFIDENTIAL

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THIS POINT BEFORE WE ARE CERTAIN OF APPLICABILITY. ALSO, WE SHOULD LEAVE THE GOM SOME ROOM TO RECONSIDER AND WITHDRAW. THE PRIME MINISTER ALSO HAS THE AUTHORITY TO DECIDE WHEN THE AMENDMENT SHOULD TAKE EFFECT. HE COULD PIGEON-HOLE IT INDEFINITELY.

6. IN RELATED DEVELOPMENT, BRITISH HIGH COMMISSION HAS TOLD US THAT BOTH SHELL AND BP SHARE THE AMERICAN COMPANIES' CONCERN OF THE EFFECT OF THE LEGISLATION AND THAT THEY HAVE ASKED LONDON FOR INSTRUCTIONS FOR AN APPROACH TO GOM. THE HIGH COMMISSIONER IN PENANG TODAY INTENDS TO SEEK INFORMAL OPPORTUNITY TO EXPRESS THE SAME KIND OF GENERAL CONCERN ON INVESTMENT CLIMATE WHICH WE HAD CONVEYED, BUT DOES NOT PLAN FOR THE TIME BEING TO MAKE ANY FORMAL REPRESENTATIONS. RAZAK WILL BE GOING TO LONDON AND WHILE IT IS AN INFORMAL VISIT, HMG WOULD HAVE AN OPPORTUNITY TO GET TO HIM IF IT WAS FELT NECESSARY. THE HIGH COMMISSION HERE FELT IT BETTER NOT TO MUDDY THE WATERS BY AN APPROACH ON THE EVE OF HIS DEPARTURE.

7. RAZAK WILL BE PLAYING GOLF LATE THIS AFTERNOON WITH PRINCE BERNHARDT. SHELL HAS APPROACHED THE NETHERLANDS AMBASSADOR AND WE UNDERSTAND THAT THE

QUESTION WILL BE BROUGHT UP DURING THE GAME.

8. COMMENT: THE KEY QUESTION HERE IS INTENTION. I FEEL THAT THE GOVERNMENT WILL BE CAUTIOUS AND DELIBERATE IN IMPLEMENTING THE AMENDMENT. IT WAS PUSHED THROUGH BY THE YOUNGER, MORE NATIONALIST ELEMENT IN THE LEADERSHIP (RAZALEIGH AND ABDULLAH AHMAD), BUT THE COOLER HEADS WILL APPRECIATE ITS IMPACT ON THE INVESTMENT CLIMATE. (A FEATURE ARTICLE IN THE PENANG STAR POINTS OUT THE APPLICABILITY OF THE MANAGEMENT SHARE GAMBIT TO OTHER INDUSTRIES.) THE AMENDMENT IS IN KEEPING WITH THE GENERALLY MORE MUSCULAR APPROACH TO INTERNATIONAL OIL COMPANIES, AND TO SOME DEGREE THE COMPANIES HAVE BROUGHT THIS ON THEMSELVES BY THE WAY THEY HAVE DEALT WITH THE GOVERNMENT ON PRICE HIKES AND SUPPLY SHORTAGES IN THE PAST. THE GOOSE HOWEVER HAS NOT REALLY STARTED TO PRODUCE THE
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GOLDEN EGGS, AND THE INTERNATIONAL COMPANIES STILL MUST SUPPLY THE LAYING MASH. IF THE COMPANIES MEAN WHAT THEY SAY, PETRONAS MAY NOT HAVE ALL THAT MUCH TO MANAGE.

9. I AM PLEASED SHELL APPEARS TO BE WITH THEIR AMERICAN COLLEAGUES. CONSIDERING THE PREDOMINANT SHELL SHARE IN DISTRIBUTION, I SHOULD LIKE TO SEE IT AND HMG TAKING A LEADING ROLE IN BRINGING THE GOM AROUND.
UNDERHILL

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Message Attributes

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